

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

GREGORY BROOKS

PLAINTIFF

V.

CAUSE NO.: 1:12CV190-SA-DAS

CITY OF WEST POINT, MISSISSIPPI; and
JIMMY BIRCHFIELD; and
WILLIAM SPRADLING

DEFENDANTS

ORDER ON MOTION TO STAY

Plaintiff has asked the Court to stay the consideration of Defendant's Motion for Attorneys' Fees [80] pending appeal to the Fifth Circuit Court of Appeals. If no stay is granted, Plaintiff requests fourteen (14) days to respond to that motion.

Defendant has filed a Motion to Establish the Recoverable Amount of Attorneys' Fees and Costs [80] after the Court granted summary judgment on Plaintiff's claims in May of 2014. In particular, Defendant seeks to establish that it is entitled to recover attorneys' fees incurred as a result of defending against claims that the Plaintiff never pursued and ultimately confessed in response to the motion for summary judgment. Indeed, Plaintiff abandoned the following claims: (1) Plaintiff's claims against the City of West Point; (ii) Plaintiff's claims against Officers Birchfield and Spradling in their official capacities; (iii) Plaintiff's claim for a Fourteenth Amendment violation; and (iv) Plaintiff's state law claims for false arrest and imprisonment, assault and battery, and intentional infliction of emotional distress.

The Fifth Circuit has held that where "a party fails to assert a legal reason why summary judgment should not be granted, that ground is waived and cannot be considered or raised on appeal." Keenan v. Tejada, 290 F.3d 252, 257 (5th Cir. 2002). Therefore, the claims Defendant

seeks attorneys' fees for are not subject to appeal and there is no reason to stay the resolution of this motion.

Accordingly, Plaintiff's Motion to Stay Pending Appeal [83] is DENIED. Plaintiff shall have fourteen (14) days from the date of this Order to respond to Defendant's Motion to Establish the Recoverable Amount of Attorneys' Fees and Costs [80].

SO ORDERED, this the 29th day of July, 2014.

/s/ Sharion Aycock
U.S. DISTRICT JUDGE